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INFO RUCNASE/ASEAN MEMBER COLLECTIVE PRIORITY
RUEHRL/AMEMBASSY BERLIN PRIORITY 0148
RUEHBY/AMEMBASSY CANBERRA PRIORITY 2261
RUEHO/AMEMBASSY LONDON PRIORITY 0398
RUEHOT/AMEMBASSY OTTAWA PRIORITY 0539
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UNCLAS SECTION 01 OF 02 PHNOM PENH 000161

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SUBJECT: ECCC LIMPS ON; RULES COMMITTEE TO MEET AGAIN IN
MARCH

REF: PHNOM PENH 103

¶1. (SBU) Summary. On January 26, the Review Committee ended its second session debating the draft internal rules and procedures of the Extraordinary Chambers in the Courts of Cambodia (ECCC). The press release noted that progress was achieved but there remain several issues where agreement between the international and Cambodian judges could not be reached. Observers registered concern over continued RGC influence over the Cambodian judges, largely driven by concern over the possible number of indictees. Resource and funding shortfalls continue to be highlighted by ECCC staff. Another Review Committee meeting reportedly will be scheduled in March; the earliest a plenary can take place is May. End Summary.

Progress, But No Agreement on Rules

¶2. (SBU) The two-week session of the ECCC's Review Committee ended on January 26 with no agreement yet on the 100-plus rules and internal procedures for the operation of the ECCC. The international and Cambodian judges made progress in narrowing the number of issues separating the two sides, but there remain "several major issues" to resolve, according to the ECCC's press release, before the Committee will schedule another full plenary of the judges to finalize and vote on the rules. Towards the end of the first week's discussions, some ECCC staff worried that there was little sign of compromise from the Cambodian side, and that the talks might end in failure. As a result, the Open Society Justice Initiative (OSJI) supported a January 19-21 visit to Cambodia by David Scheffer, who weighed in with the RGC on the importance of adhering to the UN/RGC agreement and the principles of ensuring a fair and transparent judicial process that would meet international standards (reftel).

¶3. (SBU) The second week's session went more smoothly, according to one of the international judges, who indicated that Cambodian co-investigating judge You Bunleng and Mong Monichariya of the Supreme Chambers led much of the discussion for the Cambodian side. Both are considered by ECCC judges and staff as voices of competence and reason, in stark contrast to Kong Srim and Sin Rith -- the two judges who reportedly derailed the November plenary session, along with Cambodian Bar Association president Ky Tech. ECCC sources and observers suggest that You Bunleng and Mong Monichariya's renewed status as interlocutors for the

Cambodian side was due to Scheffer's intervention and RGC recognition that the international judges were losing patience with Kong Srim, Sin Rith, and Ky Tech. During the second week, the Cambodian side proposed that they negotiate with Cambodian Bar Association head Ky Tech on behalf of the Review Committee and seek resolution of the various outstanding issues on defense counsel and the ECCC public defender's office under Rupert Skilbeck.

14. (SBU) Despite a more positive atmosphere for much of the second week, the January 25 session reportedly ended badly, prompting a Scheffer phone call to the RGC counseling reason and compromise. The final day did not produce any breakthroughs, but both sides agreed to continue the discussions in March. The press statement released by the ECCC noted that progress had been made during the two weeks of discussions, and the differences between the international and Cambodian sides narrowed significantly. ECCC sources confirmed that the earliest a plenary could take place would be in May; the RGC indicated that the April commune council elections and new year's holiday during the month would preclude Cambodian participation until May.

15. (SBU) Outstanding issues surround the operation of the defense office within the ECCC and participation of foreign defense counsel. The two sides reportedly agreed that foreign defense counsel could appear before the court, but there remain questions regarding how that would take place. Skilbeck reportedly is concerned that the international judges are compromising too much on key issues pertaining to defense matters without consultation with him; Skilbeck was not present at any of the sessions during the two weeks of meetings, and none of the judges met with him. Post

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understands that the proposed victims unit has not yet been covered in detail, and more work remains on this important issue. How international investigators would operate under Cambodian law is another outstanding issue, as foreign investigators have no authority to direct the judicial police and their investigative work carries no weight in a Cambodian court. ECCC sources note that the Cambodian side has been tasked with developing a paper covering their understanding of what was agreed upon over the two week session, and the Cambodian judges were also charged with defining how international defense counsel would participate in the courtroom; the issue of how international defense lawyers would be disciplined remains an open question.

Comment

16. (SBU) Following the conclusion of the Committee's latest session, the atmosphere among observers and ECCC staff has been similar to that at the end of the November plenary session. Some progress was made and the differences narrowed, but there remain concerns over the level of government influence over the Cambodian judges. ECCC administrative head Sean Vissoth, spoke openly during the two weeks of the possibility that some international staff may resign -- and we understand that Vissoth was admonished for his comments. Vissoth, however, was not the only one raising the question, and there was debate among our sources regarding the legal interpretation of the "escape clause" in the UN/RGC agreement that would permit the UN to terminate its support for the ECCC. Some ECCC staff are reported to be quietly documenting instances where the RGC is perceived to have influenced a decision by the Cambodian judges. The good news is that the Review Committee will continue its deliberations, and at least one of the international judges told us she was satisfied with the progress that was made. No one has any illusions, however, that it's going to be smooth sailing from now on. End Comment.
MUSSOMELI